

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF OHIO  
WESTERN DIVISION

ROBERT E. DYER,	:	Case No. 1:06-cv-222
	:	
Plaintiff,	:	Dlott, J.
	:	Black, M.J.
vs.	:	
	:	
STATE OF OHIO,	:	
	:	
Defendant.	:	<b>ORDER</b>

This case is before the Court on plaintiff's motion for hearing and motion for service by the United States Marshal. (Doc. 4). Plaintiff paid the filing fee in this matter and is not proceeding *in forma pauperis*. Therefore, service of the complaint on the defendant will not be performed by the Court. Thus, plaintiff is required to serve a summons and a complete copy of the complaint on the defendant in this matter. Accordingly, plaintiff's motion for hearing and for service (doc. 4) is **DENIED**.

Pursuant to Rule 4 of the Federal Rules of Civil Procedure:

Service upon a state shall be effected by delivering a copy of the summons and of the complaint to its chief executive officer or by serving the summons and complaint in the manner prescribed by the law of that state for the service of summons or other like process upon any such defendant.

Fed.R.Civ.P. 4(j)(2).

Rule 4.2 of the Ohio Rules of Civil Procedure (the law of this state) provides that service of process shall be made "upon this state or any of its departments, offices or institutions. . . by serving the officer responsible for the administration of the department, office, or institution or by serving the attorney general of this state." Ohio R. Civ. P. 4.2(10). Furthermore, Ohio law provides that service of process on the State of Ohio may be made by certified mail and return receipt requested. See Ohio R. Civ. P. 4.1(B) (emphasis added).

Rule 4 of the Federal Rules of Civil Procedure further provides "the person effecting service shall make proof thereof to the court." Fed. R. Civ. P. 4(l).

Plaintiff's bare assertions that he mailed "a copy of the complaint, with notices and waiver by US Mail" are insufficient to satisfy the requirements of Rule 4(l). Thus, at this time, there is no evidence of record that defendant has been properly served in this matter.<sup>1</sup>

Accordingly, plaintiff is further **ORDERED** to properly serve a summons and copy of the complaint on defendant within **thirty (30)** days of the filing date of this order, or show cause, in writing, why service cannot be effected within this time period. Failure to comply with the terms of this order shall result in a report and recommendation to the District Court that plaintiff's claims against the defendant be dismissed for lack of service.

**IT IS SO ORDERED.**

Date: 3/19/07

Timothy S. Black  
Timothy S. Black  
United States Magistrate Judge

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<sup>1</sup> Here, although the first page of the "Summons in a Civil Action" was completed and filed, plaintiff has not filed the "Return of Service" form (*i.e.*, page two of Summons in a Civil Action, AO 440, attached hereto), and/or a green card indicating that defendant was properly served by certified mail. *See* S.D. Ohio Civ. R. 4.2 (attached hereto).

AO 440 (Rev. 8/01) Summons in a Civil Action

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UNITED STATES DISTRICT COURT

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District of \_\_\_\_\_

**SUMMONS IN A CIVIL CASE**

V.

CASE NUMBER:

TO: (Name and address of Defendant)

**YOU ARE HEREBY SUMMONED** and required to serve on PLAINTIFF'S ATTORNEY (name and address)

an answer to the complaint which is served on you with this summons, within \_\_\_\_\_ days after service of this summons on you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint. Any answer that you serve on the parties to this action must be filed with the Clerk of this Court within a reasonable period of time after service.

\_\_\_\_\_  
CLERK

\_\_\_\_\_  
DATE

\_\_\_\_\_  
(By) DEPUTY CLERK

AO 440 (Rev. 8/01) Summons in a Civil Action

<b>RETURN OF SERVICE</b>		
Service of the Summons and complaint was made by me <sup>(1)</sup>	DATE	
NAME OF SERVER ( <i>PRINT</i> )	TITLE	
<i>Check one box below to indicate appropriate method of service</i>		
<input type="checkbox"/> Served personally upon the defendant. Place where served: _____ _____		
<input type="checkbox"/> Left copies thereof at the defendant's dwelling house or usual place of abode with a person of suitable age and discretion then residing therein. Name of person with whom the summons and complaint were left: _____		
<input type="checkbox"/> Returned unexecuted: _____ _____		
<input type="checkbox"/> Other (specify): _____ _____		
<b>STATEMENT OF SERVICE FEES</b>		
TRAVEL	SERVICES	TOTAL
<b>DECLARATION OF SERVER</b>		
<p>I declare under penalty of perjury under the laws of the United States of America that the foregoing information contained in the Return of Service and Statement of Service Fees is true and correct.</p> <p>Executed on _____ Date _____ Signature of Server _____</p> <p style="text-align: center;">_____ Address of Server</p>		

(1) As to who may serve a summons see Rule 4 of the Federal Rules of Civil Procedure.

**S.D. Ohio Civ. R. 4.2 SERVICE OR WAIVER OF PROCESS**

(see <http://www.ohsd.uscourts.gov/locrules.htm>)

Plaintiffs should ordinarily attempt to obtain a waiver of service of process under Rule 4(d), Fed.R.Civ.P. before attempting service of process. If a request for waiver is unsuccessful or is deemed inappropriate, the Court prefers parties to use the methods of service provided in Fed.R.Civ.P. 4 before using certified mail service under Ohio law. This Rule is confined to the domestic service of the summons and complaint in a civil action in this Court by certified mail or ordinary mail, pursuant to the law of Ohio, and is not intended to affect the procedure for other methods of service permitted by the Fed. R. Civ. P. or Ohio law. If a party elects to use Ohio certified mail service, it must be done as follows:

- (a) Plaintiff's attorney shall address the envelope to the person to be served, and shall place a copy of the summons and complaint or other document to be served in the envelope. Plaintiff's attorney shall also affix to the back of the envelope the domestic return receipt card, PS Form 3811, Dec. 1994, (the "green card") showing the name of sender as "Clerk, United States District Court, Southern District of Ohio" at the appropriate address, with the certified mail number affixed to the front of the envelope. The instructions to the delivering postal employee shall require the employee to show to whom delivered, date of delivery, and address where delivered. Plaintiff's attorney shall affix adequate postage to the envelope and deliver it to the Clerk who shall cause it to be mailed.
- (b) The Clerk shall enter the fact of mailing on the docket and make a similar entry when the return receipt is received. If the envelope is returned with an endorsement showing failure of delivery, the Clerk shall forthwith notify, electronically or by regular mail, the attorney of record or if there is no attorney of record, the party at whose instance process was issued. The Clerk shall enter the fact of notification on the docket and shall file the return receipt or returned envelope in the records of the action. (Rule 4.1, Ohio Rules of Civil Procedure.)
- (c) If service of process is refused or was unclaimed, the Clerk shall forthwith notify, by mail, the attorney of record or if there is no attorney of record, the party at whose instance process was issued. If the attorney, or serving party, after notification, files with the Clerk a request for ordinary mail service, accompanied by an envelope containing the summons and complaint or other document to be served, with adequate postage affixed to the envelope, the Clerk shall send the envelope to the defendant at the address set forth in the caption of the complaint, or at the address set forth in instructions to the Clerk. The attorney or party at whose instance the mailing is sent shall also prepare for the Clerk's use a certificate of mailing which shall be signed by the Clerk or a Deputy Clerk and filed at the time of mailing. The attorney or party at whose instance the mailing is sent shall also endorse the answer day (20 days after the date of mailing shown on the certificate of mailing) on the summons sent by ordinary mail. If the ordinary mail is returned undelivered, the Clerk shall forthwith notify the attorney, or serving party, electronically or by mail.
- (d) The attorney of record or the serving party shall be responsible for determining if service has been made under the provisions of Rule 4 of the Ohio Rules of Civil Procedure and this Rule.